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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH.

O.A. 350 of 1989.

DATE OF DECISION:

24/1/91

M.M. Lal

... Applicant.

Applicant in person.

Advocate for the applicant.

Versus

The Union of India through the
Secretary of Ministry of Personnel,
Public Grievances and Pensions, New Delhi
and another ...

.. Respondents.

Mrs. S. Albuquerque

Advocate for the Respondent(s)

C O R A M:

The Hon'ble Mr. M.Y. Priolkar, Member (A)

The Hon'ble Mr. N. Sengupta, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the Judgment ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

N. SENGUPTA
(N. SENGUPTA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.350 of 1989.

M.M.Lal, son of Late Radhey Lal,
 Secretary to the Government of Goa,
 R/o E-12, Altinho, Panaji. ... Applicant.

Versus

1. The Union of India, through the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), North Block, Central Secretariat, New Delhi-110001.
2. The Secretary to the Government of India, Ministry of Home Affairs, Union Territories Section, North Block, Central Secretariat, New Delhi-110001.

... Respondents.

Coram : Hon'ble Member (A) Shri M.Y.Priolkar
 Hon'ble Member (J) Shri N.Sengupta.

Appearances :

Applicant in person

Mrs. S. Albuquerque, Adv.
 for Respondents

JUDGMENT

(Per N.Sengupta, Member (J))

Date : 24-1-1991

Almost all the facts relevant for the decision of this case are undisputed and they may be stated as under.

2. The applicant was appointed as an Assistant Political Officer in the North East Frontier Agency (presently, Arunachal Pradesh) in April, 1955 and he was confirmed in that post with effect from 1.9.1958. That post by a subsequent notification was encadered

into Arunachal Pradesh Civil Services Class I. He continued to hold a substantive post in Arunachal Pradesh Civil Services Class I till 1.4.1983 when he was appointed to officiate temporarily in the senior time scale of the Union Territory cadre of Indian Administrative Service (I.A.S.). He continued to officiate upto 22.8.1983 and he was appointed on probation under Rule 9 of the I.A.S. (Appointment by Promotion) Regulations in the I.A.S. cadre of Union Territories on 23.8.1983 and came to be confirmed with effect from 23.8.1984. According to the provisions of the I.A.S. (Seniority) Rules, 1954, the applicant was given 1979 as the year of allotment as the juniormost direct recruit who began officiating in a senior time scale post from a date earlier than the date of appointment of the applicant was a direct recruit of 1979. There was a recommendation by the ~~Assistance~~ ^{-Estimates-} Committee of the Lok Sabha for effecting some amendments to the Seniority Rules of 1954 as it was considered that the Rules put some hurdles for the promotee Officers to reach higher scales or man posts at the top of the I.A.S. cadre. In 1987, to be precise on 6.11.1987, a fresh set of Rules known as Indian Administrative Service (Regulation of Seniority) Rules, 1987 ~~were~~ ^{was} framed. Rule 3(3) of those Rules (hereinafter called 1987 Rules) provided that the year of allotment of a promotee Officer shall be the same as the year of allotment of the juniormost amongst the direct recruit Officers who officiated continuously in a senior post from a date earlier to the date of appointment of the promotee Officer to the service. Rule 3(4) of the 1987 Rules further provided that if a promotee Officer

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officiated continuously in a senior post in accordance with the provisions of Rule 9 of the Cadre Rules, he may be assigned the year of allotment of the juniormost direct recruit officer who was appointed to officiate in a senior post from a date earlier to the date of commencement of such officiation of the promotee officer, of course that was subject to certain other conditions with which we are not concerned except Clauses (b) & (c) of the said sub-rule. The 1987 Rules were amended on 18.1.1988 and the amendment was changing Rule 3(3)(ii) of the 1987 Rules and deleting Rule 3(4) of the said 1987 Rules. By this amendment of 1988 it came to be provided that the year of allotment of a promotee officer shall be determined by giving a weightage of four years towards fixation of the year of allotment for service rendered in the State Civil Service upto 12 years and, for service beyond 12 years, for every completed 3 years of service in the State Civil Service, one year subject to a maximum weightage of 5 additional years. This was made subject to a proviso which reads as below:

" Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select List. "

3. The applicant after the 1988 amendment represented to the Ministry of Home Affairs, Government of India for changing his year of allotment from 1979 to 1974 stating that infact he rendered 28 years of service in Grade I of the State Civil Service before his appointment to the I.A.S. and he relied on the provisions of 1988 amendment to the 1987 Rules. This representation was made by the applicant on

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8.2.1988. In reply to this representation the Government of India in the Ministry of Home Affairs by their letter No. U-14019/4/84-UTS dated 15th February, 1988 stated that as the amending notification of 18.1.1988 had prospective effect, it cannot apply to his(applicant's) case as he was appointed prior to that date. After that reply of the Ministry of Home Affairs, Government of India, the applicant submitted a further representation on 22.2.1988, as he did not receive any reply, he sent reminders on 3.6.1988 and on 10.4.1989 but he received no reply. Thereafter, he filed this application claiming the reliefs, as they stand after amendment, of holding the letter of Government of India, Ministry of Home Affairs dated 15.2.1988 being incorrect inasmuch as by making Rules prospective, a discrimination has been made between the Officers appointed prior to 18.1.1988 and those appointed after that date, a direction to the respondents that the 1988 amendment should be made applicable to all promotees uniformly irrespective of their date of promotion, Rule 9(2) of the Seniority Rules of 1987 Rules be struck down as infructuous, and to say that the commencement of continuous officiation in a senior time scale post shall form the basis for fixing the interse seniority of the officers assigned the same year of allotment. Here, it may be added that Rule 9(2) of 1987 Rules states that the seniority of Officers appointed to the service prior to the coming into force of those Rules shall be determined in accordance with I.A.S. (Regulation of Seniority) Rules, 1954 in force

Replies

on the date of their appointment to the Service.

4. The respondents in their reply to the application have practically taken only legal pleas namely non-maintainability of the application for non-joinder of persons who are likely to be affected by the grant of relief asked for by the applicant, the application being barred by limitation and that no legislation or Rule could be said to be retrospective unless it is expressly so mentioned or there is a necessary implication of retrospectivity of the law. They have also taken the ground that if the prayer of the applicant be allowed, settled seniority of many officers would be unsettled which would cause prejudice to many of the direct recruits to the I.A.S. prior to the coming into force of 1987 Rules. This statement about the pleadings of the parties would be sufficient for the purpose of this judgment.

5. The applicant has argued his case in person and Respondents' case has been presented by Mrs. S. Alboo Gurque.

6. The question of limitation may be taken up first for consideration. Shortly after the 1988 amendment of the Seniority Rules came into force, the applicant made a representation which was replied to by the Government of India in their letter dated 15.2.1988. This application was filed on 10.5.1989. Ofcourse from 15.2.1988 more than a year passed by the time of presenting the original application. The applicant in his representation dated 22.2.1988 elaborated the reasonings why for he made a representation

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dated 8.2.1988 and that representation was practically against the letter dated 15.2.1988, Annexure-A(10) to the application. The starting point of limitation is the order by which the applicant feels aggrieved and undoubtedly the applicant's entire case is directed against this letter dated 15.2.1988 wherein the Government of India stated that the 1988 Rules were only prospective and cannot cover the case of the applicant as he was appointed to the I.A.S. prior to 18.1.1988. That being the position, we would say that the application is well within 1½ years from 15.2.1988, which is the period of limitation as admittedly, no reply has been given by the Respondents to the representation made on 22.2.1988 against the order dated 15.2.1988.

7. Mrs. Albooquereque, the learned counsel for the respondents, has urged that the applicant has not joined persons likely to be affected in the event of the reliefs asked for by the applicant being granted, the application suffers from non-joinder of necessary parties, in this connection she has referred to paragraph 2_u of the written reply of the respondents. The applicant's contention is that the reliefs he has asked for are against the respondents on record and not against any individual, he has challenged certain principles regarding applicability of the 1987 Seniority Rules and the amendment of January 1988, so except the respondents on record no other person need be made a party. For this contention the applicant has

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sought reliance on G.M., South Central Railways vr. A.V.R. Siddhanti (1974) 4 S.C.C. 335 and O.P. Batra vr. Secretary, Ministry of Urban Development (1988) 6 A.T.C. 132 and also on AIR 1986 SC 210 (B. Prabhakar Rao vr. State of Andhra Pradesh). The challenge in the reported case in (1974) 4 S.C.C. 335 was against two circulars of the Railway Board concerning seniority of some categories of employees. The question for consideration in the instant case is similar to the one raised in that reported case because on the year of allotment fixation of seniority would much depend. In that case the Hon'ble Supreme Court held that the persons who were likely to be affected as a result of readjustment of the seniority of the petitioner in that case were at the most proper parties and not necessary parties. The other two decisions, one by New Delhi Bench of this Tribunal and the other of the Hon'ble Supreme Court, are also to the same effect. Therefore, we are unable to countenance the contention of the learned counsel for the respondents that the application suffers from defect of non-joinder of parties.

8. Now coming to the main question in this case it may be stated that the applicant wants declaration that the letter dated 15.2.1988 is void as it makes an unreasonable discrimination offending the fundamental right to equality before law and equal protection of laws and is opposed to principles of natural justice. In support of this prayer of his, Mr. Lal has submitted that in the 1954 Seniority Rules the period of officiation of a direct recruit was taken into account for assigning his year of allotment but it was denied to a

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promotee officer, and to do away with this anomaly, in 1987 Seniority Rules Rule 3(4) was framed. This contention is based on a mis-reading of the 1954 Seniority Rules. For the sake of convenience and a proper appreciation it is better to quote Rule 3(3)(b) of the 1954 Rules.

"Where the officer is appointed to the Service by promotion in accordance with sub-rule(1) of rule 8 of the Recruitment Rules, the year of allotment of the juniormost among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a seniorpost from a date earlier than the date of commencement of such officiation by the former; . . . "

We have underlined the portion to bring into sharp focus the fact that in assigning the year of allotment to a promotee officer, on which the determination of his seniority depended, the period of his officiation in a senior post in Service was not to be ignored. This would also appear fromExplanation I to that sub-rule. In fact the Supreme Court in their judgment in the case of Union of India vrs. G.N.Tiwari relied on that rule to say that continuous officiation of promotee officer in a senior post in the Service was to be taken into account for seniority.

9. Mr.Lal has contended that in order to give effect to the decision of the Supreme Court in G.N.Tiwari's case, the Central Government framed the seniority Rules of 1987. Ofcourse, the reason why a fresh set of Seniority Rules was framed in 1987 is not expressly mentioned in those Rules, but however, it appears that as by the year 1987 seniority of Officers recruited by the I.A.S. (Special Recruitment) Regulations, 1957 and of the officers appointed

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to the Service on initial constitution of the joint cadre for Union Territories, Nagaland and Sikkim had been determined, ~~now~~, Rules 5 A to 5 E of the 1954 Rules had not much relevance. Instead of making piece meal amendments perhaps the Central Government thought it proper to have a consolidated set of Rules for determination of seniority of the persons belonging to the I.A.S., but that is a matter which does not very much concern us except for saying that, as has been indicated above, the 1987 Rules were really not meant to conform to the decision of the Hon'ble Supreme Court in G.N.Tiwari's case as it has been shown a little above ~~relied~~ ^{it} on the existing rule 3(3)(b) of the Seniority Rules of 1954.

10. Many of the arguments advanced by Mr.Lal in this case were also put forth before the Patna Bench of this Tribunal in O.A.135 of 1989 of that Bench (S.K.Sinha vrs. Union of India) and those arguments were met. That being the position, we do not think it worth the while to cover the ground again as the Patna Bench decision is binding on us unless overruled. Having gone through that judgment we do not feel the necessity to differ from most of the conclusions arrived at by that Bench. However, as Mr.Lal has argued the case in person and he has tried to make out that his contentions are some what special, we would refer to them in brief. Mr.Lal has contended that by deleting Rule 3(4) of 1987 Rules by the amendment in 1988, and making the 1988 amendment prospective a discrimination between persons appointed prior to 18.1.1988 and those appointed after that date has been made. In

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elaborating this contention Mr.Lal has urged that those promoted prior to 18.1.1988 would get the benefit of their continuous officiation whereas those appointed after that date would not get the same benefit. In this regard Mr.Lal has referred to Nakhraj's case which was one relating to payment of pension. The Patna Bench in the case referred to above opined that Nakhraj's case was distinguishable from the one before them where this particular amendment of 1983 was also impugned and have further stated that payment of pension is a continuous process and assignment of year of allotment is only once. We generally agree with this observation of the Patna Bench. It is pertinent to note that the applicant has not questioned the propriety of the amendment made to Rule 3(3)(ii) of the 1987 Rules and infact he has based his claim on that amendment. Mr.Lal has also referred us to the decision in AIR 1986 SC 210, Pravakar Rao's case, in support of his contention that persons retiring prior to 18.1.1988 have been discriminated against and also he has sought reliance for another contention of his which we would be noticing a little below. The facts of that case were quite different from those of the one in hand. There, the Andhra Pradesh Government reduced in 1983 the age of super-annuation from 58 to 55 years. But finding that it was unjust, they in 1984 promulgated an ordinance which was replaced by an Act in 1985 providing for reverting back to the old age of retirement on superannuation. The question that the Hon'ble Supreme Court answered was whether not extending the benefit to the persons who retired between the

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date of reduction of the age of superannuation from 58 to 55 and the date when again the age of superannuation was made 58, was discriminatory. The Supreme Court found that there was no just cause for not extending the benefit to that class of persons and in that context they stated that there was unreasonable classification.

11. Mr. Lal has sought to rely on Pravakar Rao's case for his contention that even though amendment of 1983 might not have been made retrospective this Tribunal can declare that it should be given retrospective effect. We may repeat the well known principle that what is prohibited is not classification but it is only unreasonable classification which is prohibited. If by giving retrospective effect some absurd or incongruous results would ensue, no provision could be given retrospective effect nor can any classification to avoid such absurd results be said to be unreasonable. If, as contended by Mr. Lal, the weightage formula is introduced by the 1983 amendment to the Seniority Rules is made applicable to all promotees irrespective of their dates of promotion to the I.A.S. cadre, certain unworkable situation would arise. Though not expressly so stated, a person assigned an earlier year of allotment would be senior to a person assigned the latter year. It is common knowledge that the posts of District Magistrates and Collectors in the States are included in the senior posts and the posts of Secretaries and Commissioners etc. are treated as promotional posts. If the 1983 amendment rule is given retrospective effect in many cases a person who

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was promoted to the I.A.S. after rendering 20 years or more service in the State Civil Service cadre would become senior to some of the direct recruits manning those promotional posts of Secretaries and Commissioners. If the promotees who by the application of 1988 amendment Rule become senior to those direct recruits holding promotional posts, then such direct recruits are to be reverted back to hold posts equivalent to District Magistrates and Collectors, otherwise an incongruous situation of a junior occupying a higher post would arise. Thus, it would be found that the contention of Mrs. Ablooguereque that it would not be possible to give retrospective effect to the 1988 amendment Rules is well founded. She has also contended that it is not legally permissible to give retrospective effect to the amendment Rules and thereby cause prejudice to the direct recruits who had been in service prior to 18.1.1988. By Act 23 of 1975 sub-section (1A) was inserted in Section 3 of All India Services Act, 1951. No rule framed under an Act can go against any provision of the Act under which it is framed. Section 3(1A) of 1951 Act provides that the power to make rules would include the power to give retrospective effect but no retrospective effect shall be given so as to prejudicially affect the interest of another person to whom such rules apply. Undoubtedly the Seniority Rules apply to all persons in the I.A.S. cadre and as has been stated above, by giving retrospective effect the interests of direct recruits appointed prior to the amendment in

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1988 would be prejudicially affected.

12. Mr.Lal has contended that by not giving retrospective effect the benefit which was intended to be given to the promotee officers has been denied. The Patna Bench of this Tribunal dealt with this question and had assigned reasons for repelling this contention in paragraphs 8 & 9 of its judgment and we agree with most the reasons given in those paragraphs by the Patna Bench. Mr.Lal has contended that till upto 1996 the full advantage of the weightage formula cannot be had, this contention has no doubt some force. But all the same, it is to be added that the promotees began to reap some advantage, may not be full advantage, with effect from 18.1.1988. This can be illustrated by the following statement. The last direct recruitment prior to 18.1.1988 would be in 1987 and taking four years as the time required for a direct recruit to hold senior post, those persons who were recruited directly in the year 1983 would hold senior post in 1987, those promoted in 1987 would ordinarily be assigned the 1983 as the year of allotment and those promoted in 1988 may also be assigned the 1983 as their year of allotment if they had rendered 15 years or more service in the State Civil Service. Therefore, we are of the opinion that from 18.1.1988 there would be some advantage to promotee officers and that really partially achieves the purpose. In many cases the intended benefits may not be fully reaped at once and they may come slowly. But that would not amount to a defeating beneficial purpose of the provision.

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13. Mr.Lal has very strenuously urged that a grave injustice hasbeen done to the promotees by not taking into account their officiation for determining their seniority. It has been stated above, that the amendment in 1988 substituted Rule 3(3)(c) of the 1987 Seniority Rules and 1987 Seniority Rules were really in the nature of a consolidating and amending provision. Previously the period of continuous officiation of a promotee officer in a senior post was being taken into account as the seniority was linked with that of the direct recruits. But by the weightage formula introduced in 1988 it was delinked.

14. Mr.Lal has referred to the fact of period of training of the direct recruits being taken into account for determining their length of service and has contended that during that period, the direct recruits really render no service. Therefore, by not allowing the promotee Officers to take full advantage of the period of their continuous officiation in a senior post, an unreasonable discrimination has beenmade. In this regard, all that we need to say is that such of the promotee officers who had not attained the age of 52 years by the time of their appointment to the service and had not undergone the training prescribed under its sub-regulation(5) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion)Regulations, 1955 are required to undergo the training and this period of training is not to be deducted from the length of service of the promotee officer in the I.A.S. That meets the arguments.

Ans

15. Mr. Lal has contended that as during the period of officiation in the I.A.S., the officer does not render service in the State Civil Service cadre, there would be a void unless the period of officiation in the I.A.S. is reckoned for the purpose of seniority. This argument can be met by saying that when a person officiates in a post carrying higher responsibilities, such service would also enure for the purpose of increment and other benefits of service even in the lower grade. Therefore, though there may be some apparent difficulty, there is really nothing to obstruct giving effect to the provisions of Rule 3(3)(ii) as provided for by the 1988 amendment.

16. So far as the second prayer of Mr. Lal is concerned, we would like to refer to Rule 4 of the Seniority Rules of 1987 which has not been amended in 1988. That provides that the promotee Officers shall be ~~ranked~~ ^{ranked} inter se in the order of their dates of appointment and if the date of appointment of more than one officer is the same, their inter se seniority shall be in the order in which their names are arranged in the ~~seniority~~ ^{Select} list. Therefore, there is absolutely no void left in the matter of determining inter se seniority of the officers assigned the same year of allotment because a person promoted later cannot be assigned the year of allotment earlier than ^{the} one assigned to a person who had been promoted earlier.

17. To sum up, of necessity the amendment of 1988 was to be made prospective in order to avoid some unworkable situations, the benefit intended to be conferred on the

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promotee officers though does not flow at once, it would come gradually and lastly, no void has been left in the matter of determining inter se seniority amongst persons promoted and assigned the same year of allotment.

18. The prayers are rejected but however as the contentions raised by Mr.Lal required much deliberation and thought to reject them, there shall be no order as to costs.

M.Y. Priolkar
..... 24.1.1991.
(M.Y. PRIOLKAR)

MEMBER (A)

N. Sengupta
.....
(N. SENGUPTA)
MEMBER (J)